Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY OF LIGHTSQUARED SUBSIDIARY LLC REGARDING THE SUPPORT OF SATELLITE-BASED SERVICE TO TRIBAL AND OTHER UNSERVED AND UNDERSERVED RURAL AREAS

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SUMMARY

LightSquared's assets, technology and mission make it uniquely capable of providing broadband service to unserved and underserved areas, including Tribal lands. LightSquared has already invested well over $1 Billion in technology and spectrum development – including the successful deployment of a $600 million satellite – and will invest an additional $14 Billion in network development across the country. The LightSquared technology will cover 100% of the country; provide 4G LTE coverage to 260 million Americans by 2015; support 15,000 jobs per year; and provide wholesale broadband infrastructure to support numerous industries. This massive investment provide wholesale satellite and terrestrial wireless broadband service directly addresses the Commission's stated concerns over spectrum scarcity and service to high-cost areas.

LightSquared has demonstrated a strong commitment to serving Tribal lands. It has donated over 1,000 satellite phones and free service through 2020 to the Indian Health Service, and has entered into service agreements with the Bureau of Indian Affairs – through these arrangements, LightSquared is providing services to health care, education and law enforcement programs serving Tribal lands across the country.

If the Commission adopts a "reverse auction" process for its proposed Connect America Fund ("CAF"), the new rules should expressly allow satellite service providers to be lead bidders for CAF support. While the Commission initially considered allowing satellite participants to participate in CAF auctions only as secondary partners to wireline or terrestrial wireless providers, the record of this proceeding demonstrates that satellite providers are uniquely situated to provide broadband service to unserved and underserved areas of the country, and can bring innovation and diversity to the auction process if permitted to function as lead bidders. For

the same reason, CAF bidders should not be restricted by pre-defined service standards or pricing plans – the public interest will benefit from having the largest possible variety of proposals and service providers represented in the CAF auctions. Finally, the Commission should require census block-specific costing to ensure the accurate evaluation of competing bids.

The Commission should also exempt Tribal lands from any new rule changes that would reduce universal service support below current levels, prevent service providers from demonstrating that additional support above current levels is justified, or prevent the emergence of new market entrants or Tribally-owned service providers. The Commission has repeatedly recognized that Tribal lands are the largest concentrations of unserved and underserved communities in the country, and this position is reflected without exception among the parties addressing Tribal issues in the instant proceeding. By definition, the existing service providers and the existing levels of USF support have been inadequate to provide even the minimal level of broadband service on most Tribal lands. In the past, the Commission exempted Tribal lands from changes in its USF rules that would cap available support, and such action is fully warranted in the case of any new rules that the Commission will adopt in the instant proceeding. The unique needs of Native American communities – including maintenance of sovereignty, respect for culture and heritage, and the provision of service to the highest-cost and lowest income communities in the country, require a unique approach to federal support.

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REPLY OF LIGHTSQUARED SUBSIDIARY LLC REGARDING THE SUPPORT OF SATELLITE-BASED SERVICE TO TRIBAL AND OTHER UNSERVED AND UNDERSERVED RURAL AREAS

In its recent *Public Notice*,[1] the Commission seeks comment on specific proposals made by ViaSat, Inc. and WildBlue Communications, Inc. regarding the proposed Connect America Fund ("CAF") auction process as it applies to the support of satellite-based broadband services.[2] As discussed below, LightSquared Subsidiary LLC ("LightSquared") agrees with the ViaSat/WildBlue proposals that satellite providers must be allowed to be "primary bidders" in any CAF auctions; and that bids should require census block-specific cost information.

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[1] *Further Inquiry Into Certain Issues In the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA 11-1348, at 8 & n.32 (rel. Aug. 3, 2011) ("*Public Notice*").

[2] P. Milgrom and A. Eilat, *"The CAF Auction: Design Proposal,"* filed by ViaSat, Inc. and WildBlue Communications, Inc. in the above-captioned proceedings on July 26, 2011 ("*ViaSat/WildBlue Letter"*).

LightSquared opposes restricting any CAF auctions to pre-defined service or pricing standards, and favors maximum flexibility for bidders.

The Commission also asks a number of questions specific to the provision of broadband service on Tribal lands.[3] As discussed below, LightSquared is committed to taking a leadership role in providing service to Tribal areas. LightSquared takes no position regarding proposed rule changes that may affect Alaska. Regarding service to Native Lands in the contiguous states, however, LightSquared notes that Tribal lands are currently chronically unserved – which demonstrates that, to date, existing service providers and existing levels of USF support have been inadequate to bring even basic service to those areas. The Commission must adopt rules uniquely designed to meet the needs of Tribal lands, must not establish arbitrary caps on available support, and must provide needs-based support as each Tribal area requires.

I. INTRODUCTION: LIGHTSQUARED IS UNIQUELY CAPABLE OF, AND UNIQUELY FOCUSED ON, PROVIDING BROADBAND SERVICE TO UNSERVED AND UNDERSERVED RURAL AREAS

LightSquared's resources, spectrum assets, and focus on ensuring that the necessary broadband services reach unserved and underserved areas across the country make the company uniquely positioned to fulfill some of the Commission's – and the Administration's – most important policy goals.

A. LightSquared's Technology and Mission

LightSquared has 40 MHz of spectrum to use for broadband, and has plans to deploy broadband aggressively. In 2003, the Commission granted LightSquared approval to deploy 10,000 base stations, and this authorization was increased to an unlimited number in 2005.

[3] *Public Notice,* 9, 10.

LightSquared currently plans on building 40,000 base stations. When fully implemented, LightSquared's network will:

- Invigorate the U.S. economy with private investment: Lightsquared has already invested well over $1 Billion in satellite and spectrum development – including the successful deployment of a $600 million satellite – and plans to spend an additional $14 Billion in network development. This investment will support 15,000 good jobs each year over the next five years.

- Bring reliable broadband to rural America, covering 100% of the country, and providing 4G LTE coverage to 260 million Americans by 2015.

- Generate $120 Billion in consumer benefits to the U.S. by providing a broadband platform on which retailers, wireline and wireless providers, cable operators, device manufacturers and new entrants can offer new and better services.

- Deploy state-of-the-art technology that will support public safety and homeland security, and positively transform other industries such as health care, automotive, transportation, education, media, entertainment and energy.

B. LightSquared Addresses Two Central Commission Policy Objectives: Ameliorating Spectrum Scarcity and Bringing Broadband to Unserved and Underserved Areas

For many years, spectrum scarcity has been a significant concern to the Commission. The Commission's 2002 *Spectrum Policy Task Force Report* noted:

> Due to the growth in demand for spectrum-based services, many spectrum users seek additional spectrum and it now appears as though spectrum demand is outstripping spectrum supply. Indeed, most prime spectrum has already been assigned to one or more parties, and it is becoming increasingly difficult to find spectrum that can be made available either for new services or to expand existing ones.[4]

Chapter 5 of the National Broadband Plan[5] describes the urgent need to find additional spectrum that can be used to support the ever-growing requirements for broadband services:

- "Spectrum policy must be a key pillar of U.S. economic policy."[6]

[4] Spectrum Policy Task Force, ET Docket No. 02-135, Report, 14 (rel. Nov. 2002) ("*Spectrum Policy Task Force Report*").
[5] Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, GN Docket No. 09-51 (2010) ("National Broadband Plan").

- "The FCC should maintain an ongoing strategic spectrum plan…."[7]

- "The broadband spectrum needs of the U.S. are growing as it is becoming more difficult to identify large swaths of spectrum … that can be reclaimed for auction."[8]

- The "U.S. government should take several actions to address urgent broadband spectrum needs."[9]

- "The FCC and NTIA should develop a joint roadmap to identify additional …spectrum that can be made accessible for both mobile and fixed wireless broadband use…."[10]

The Commission specifically noted that spectrum scarcity with respect to satellite communications is a particular problem:

> In addition to requiring large financial investments, entry into satellite communications requires radio spectrum licenses and orbital slots. The lack of availability of commercial spectrum has the potential to create a significant barrier to entry into markets for commercial satellite communications services. While technological advances have steadily increased the ability to fit more users into any given band, radio spectrum remains a finite resource.[11]

Recently, the National Broadband Plan addressed the importance of satellite communications and the need to ensure prompt deployment of such service:

> MSS has a unique role in our communications infrastructure, and the preservation of sufficient spectrum for MSS incumbent users is important for ensuring continuity of mission-critical communications services…. Specifically, the FCC should take the following actions to promote more productive use of MSS spectrum…. The FCC and other government agencies should work closely with L-Band licensees and foreign governments to

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[6] National Broadband Plan, Chapter 5, Introduction.
[7] National Broadband Plan, Chapter 5, Introduction.
[8] National Broadband Plan, Recommendation, 5.3.
[9] National Boradband Plan, Section, 5.1 ("Growing Spectrum Needs").
[10] National Broadband Plan, Recommendation, 5.15.
[11] Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, IB Docket No. 06-6, First Report, FCC 07-34, at 37, ¶ 106 (rel. Mar. 26, 2007).

accelerate efforts to rationalize ATC-authorized L-Band spectrum to make it usable for broadband ATC service.[12]

The Commission has noted that the spectrum scarcity described above will have significant adverse consequences if not addressed. The National Broadband Plan states:

- "The growth of wireless broadband will be constrained if government does not make spectrum available to enable network expansion and technology upgrades."[13]

- "Additional spectrum is also required to accommodate multiple providers in a competitive marketplace, including new entrants and small businesses, as well as to enable wireless services to compete with wireline services. The U.S. Department of Justice (DOJ) aptly summarized: 'Given the potential of wireless services to reach underserved areas and to provide an alternative to wireline broadband providers in other areas, the Commission's primary tool for promoting broadband competition should be freeing up spectrum.'"[14]

- "In the absence of sufficient spectrum, network providers must turn to costly alternatives, such as cell splitting, often with diminishing returns. If the U.S. does not address this situation promptly, scarcity of mobile broadband could mean higher prices, poor service quality, an inability for the U.S. to compete internationally, depressed demand and, ultimately, a drag on innovation."[15]

- "Ultimately, the cost of not securing enough spectrum may be higher prices, poorer service, lost productivity, loss of competitive advantage and untapped innovation. It would not be wise for America to bet its future on a strategy of 'demand reduction.'"[16]

As noted above, LightSquared has 40 MHz of spectrum with nation-wide coverage, and intends to provide wholesale spectrum services across all segments of the industry. In so doing, LightSquared will advance the National Broadband Plan objective of rationalizing L-band spectrum to make it usable for broadband service.

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[12] National Broadband Plan, Recommendation 5.8.4 ("The FCC should take action to accelerate terrestrial deployment in 90 megahertz of Mobile Satellite Spectrum MSS"). Of course, this issue was subsequently addressed by Commission action.
[13] National Broadband Plan, Section 5.1 ("Growing Spectrum Needs").
[14] National Broadband Plan, Section 5.1 ("Growing Spectrum Needs").
[15] National Broadband Plan, Section 5.1 ("Growing Spectrum Needs").
[16] National Broadband Plan, Recommendation, 5.8.

Similarly, the Commission has made provision of broadband to unserved and underserved rural areas a priority. The *USF/ICC NPRM* notes that satellites will play a critical role in reducing the overall cost of the USF/CAF program and providing broadband service to high-cost areas.[17] That conclusion is fully supported both by the American Broadband Connectivity Plan ("*ABC Plan*"),[18] and by the *State Regulators Plan*.[19] Indeed, in their August 24 Comments, the signatories of the ABC Plan reiterate that, "[i]n certain extremely high-cost areas, satellite broadband is the only viable solution for near-term broadband deployment."[20]

Indeed, LightSquared has already begun to make a difference in unserved areas. As detailed in its comments in CG Docket No. 11-41, LightSquared, through affiliate partnerships with the Bureau of Indian Affairs ("BIA"), provides equipment and services for use on BIA law enforcement vehicles and school busses. In addition, on September 20, 2010, LightSquared signed an agreement with the Indian Health Service under which LightSquared is donating over 1,000 satellite phones, and free service through 2020, to hospitals, health centers and field clinics in serving Native lands in New Mexico, Colorado, Texas, Oregon and Washington.[21] LightSquared incorporates those comments into the instant proceeding by reference. This is just the first example of the major impact that LightSquared will have in bringing broadband service to unserved and underserved rural areas. LightSquared's unique combination of resources, spectrum assets, and its mission of serving areas that have been denied access to adequate

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[17] *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking,* 26 FCC Rcd 4554, ¶¶ 104, 133, 415, 242 (2011) ("*USF/ICC NPRM"*).

[18] America's Broadband Connectivity Plan, filed in the above-captioned docketed proceedings, dated July 29, 2011, Attach. 2, p. 3 ("*ABC Plan*"). See also Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon and Windstream, filed in the above-captioned docketed proceedings, dated August 24, 2011, 7-8, 15 ("*ABC Signatory Comments*"),

[19] Comments by State Members of the Federal State Joint Board on Universal Service, filed in the above-captioned docketed proceedings, dated May 2, 2011, 39-40, 58 ("*State Regulators Plan*").

[20] *ABC Signatory Comments*, 15.

[21] Comments of LightSquared Subsidiary LLC, filed in CG Docket No. 11-41 on June 20, 2011, 3-5 ("*LightSquared Docket No. 11-41 Comments*").

broadband services directly addresses two of the Commission's most important policy priorities: solving the spectrum scarcity issue, and providing broadband service to unserved and underserved areas of the country.

II. IF THE COMMISSION ADOPTS AN AUCTION PROCESS, IT SHOULD ACCORD AUCTION PARTICIPANTS MAXIMUM FLEXIBILITY IN SERVICE AND PRICING DESIGN

A. Introduction: The Commission's "Reverse Auction" Proposal

The Commission posits a "reverse auction" process as one alternative in selecting broadband providers that will be supported by the Connect America Fund. Such a process would be won by the provider or group of providers that need the least amount of CAF support, and would therefore yield the most cost-effective results for the high-cost portion of the Universal Service Fund.

The *USF/ICC NPRM* posits that satellite technology will be an important part of the CAF program because it can provide the most cost-effective way of bringing broadband service to the highest-cost areas in the country.[22] However, the Commission is concerned that satellite technology has cost and service characteristics that are so different from wireline and terrestrial wireless service providers, that satellite providers would always become the least-cost provider in any reverse auction, and would skew the results of the Commission's proposed CAF auction system.[23] The Commission therefore asks whether satellite providers should be prohibited from bidding directly for CAF support, but rather should be required to "partner" with wireline or terrestrial wireless providers to fill in the highest-cost portions of their proposed service areas.[24]

ViaSat and WildBlue have submitted a letter that objects to this limitation on the role of satellite technology and satellite providers in CAF-supported services, and offers other specific

[22] *USF/ICC NPRM,* ¶¶ 104, 133, 415, 242.
[23] *See id.*
[24] *Id.,* ¶ 427.

recommendations on how a CAF auction – if it is adopted by the Commission – should be structured. The Commission expressly seeks comment on the ViaSat/WildBlue Letter's proposals regarding the structure of auctions.[25] As discussed below, LightSquared strongly agrees with the ViaSat/WildBlue Letter that the Commission should not limit the ability of satellite-based broadband providers to compete for CAF support.

B. The ViaSat/WildBlue Proposal

The *ViaSat/WildBlue Letter* contains a number of proposals regarding the structure of a CAF auction. LightSquared will focus on three of them: First, the *Letter* contests the Commission's alternative proposal that satellite providers should be excluded from participating directly in the proposed CAF auction, and that, instead, satellite providers can participate in the auction process by being "partners" with incumbent LECs or wireless carriers.[26] ViaSat and WildBlue disagree with this proposal, and argue that satellite providers should be able to participate in auctions directly, and that there should be no restrictions on the service areas on which they bid.[27] Second, the *Letter* proposes that, for purposes of evaluating competing CAF auction bidders, the Commission should require that all costs be disaggregated into individual census blocks.[28] Finally, the Letter suggests that the Commission may specify the speed of broadband services, or the prices for such services at the start of an auction, and limit participants to those that meet these parameters.[29] LightSquared comments on these proposals below.

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[25] *Public Notice*, DA 11-1348, 8 & n.32)
[26] *USF/ICC NPRM*, 26 FCC Rcd 4554, ¶ 272.
[27] *ViaSat/WildBlue Letter,* 3-4. See also Comments of the Satellite Broadband Providers (DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, Spacenet Inc., ViaSat, Inc. and WildBlue Communications, Inc.), filed in the above-captioned proceedings, dated Aug. 24, 2011, 4-6, 10, 15 and *passim* ("*Satellite Provider 8/24 Comments*").
[28] *ViaSat/WildBlue Letter,* 6.
[29] *ViaSat/WildBlue Letter,* 6-7.

C. Satellite Providers Should Not Be Relegated to Secondary "Partner" Status, But Should Be Allowed to Be Lead Bidders

The ViaSat/WildBlue proposal posits that satellite providers should be eligible to bid for all households.[30] This is in response to the Commission's alternative proposal that satellite providers would have an insuperable advantage in any reverse auction process,[31] and proposals of other commenters, which envision that satellite providers may only participate in auctions as partners of LECs or terrestrial wireless providers.[32] LightSquared agrees with ViaSat and WildBlue that satellite providers must be allowed to bid directly for CAF support – either as sole-source providers, or by recruiting their own wireline or wireless terrestrial partners – for the following reasons:

1. True "Technology Neutrality"

The Commission's *USF/ICC NPRM* correctly and repeatedly states its desire that the CAF program be "technology-neutral,"[33] and this conclusion is supported by the State Regulators.[34] Given the pace of innovation in this industry, this is a necessary component of any CAF program. But, as detailed in the *Satellite Provider 8/24 Comments*, technology neutrality cannot be achieved by relegating satellite technology and satellite providers to a secondary status, in which a necessary precondition to their participation in the CAF program is an invitation by a wireline or terrestrial wireless carrier.[35]

Creating a system in which existing terrestrial technologies will always be the "lead" technologies in providing broadband service to unserved areas will prevent innovative use of satellite technology. After all, "unserved" areas by definition have not been adequately served

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[30] *ViaSat/WildBlue Letter,* 14-17.
[31] *USF/ICC NPRM,* ¶ 272.
[32] *State Regulators Plan* at 39-40; *ABC Plan* at Attach. 1, 5-6, 8 and Attach. 2, 2-3; *ABC Signatory Comments*, 7-8 & n.24.
[33] *E.g., USF/ICC NPRM*, 26 FCC Rcd 4554, ¶¶ 24, 31, 93, 104.
[34] *State Regulators Plan,* 133-34.
[35] *Satellite Provider 8/24 Comments,* 10, 17 and *passim.*

by the existing terrestrial technologies and providers to date.[36] There is no basis on the record of this proceeding to assume that wireline and terrestrial wireless carriers would be more efficient than satellite providers in designing technology solutions for unserved and underserved areas in the future. In order for any CAF auction process to be technology neutral, satellite providers must be given the opportunity to be sole or primary bidders.

Indeed, as developed in the joint comments of a number of satellite providers, satellite-based services can be expanded to provide the full equivalent broadband services provided by terrestrial technologies in the country's highest-cost areas.[37] Given that satellite broadband can be fully substitutable for terrestrial services in high-cost areas, the Commission's stated commitment to "technology neutrality" requires that satellite providers have the right to act as lead bidders for CAF support, as well as participate as partners to other lead bidders.

Given the plight of unserved and underserved areas with respect to broadband services, the last thing the Commission should do is restrict these Americans' options with respect to receiving such services. Any such unnecessary restrictions will just further ensure that these citizens are left behind far longer than they need to be.

2. Optimally Efficient Bidding and Service Provision

The Commission correctly concludes that satellite technology is critical to maintaining reasonable limits on the size of the CAF fund,[38] and the *ABC Plan* concludes that satellite service will be necessary to provide broadband service to hundreds of thousands of residents of very high-cost areas.[39] Therefore, having satellite providers act as "primary bidders" who recruit wireline or wireless terrestrial partners can provide a range of new options that will enhance the

[36] *Satellite Provider 8/24 Comments,* 13-14.
[37] Joint Comments of Satellite Broadband Providers (DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, ViaSat, Inc. and WildBlue Communications, Inc.), filed in the above-captioned docketed proceedings, dated April 18, 2011, 6-9.
[38] *USF/ICC NPRM,* ¶¶ 133, 415, 242.
[39] *ABC Plan* at Attach. 2, 2-3.

bidding process, and the likelihood of achieving optimum service solutions. The Commission's speculation that satellite providers would have an unfair advantage in reverse auctions if they are permitted to bid directly[40] is unfounded. In evaluating bids, the Commission will consider variations in service offerings, including maximum and minimum speeds, price points, service packages, etc. – the Commission has not proposed that lowest cost will be the sole determining factor in awarding CAF support. A responsible review of bids in their entirety will ensure that service providers offer the best possible service for the lowest possible cost. Allowing satellite providers to participate in auctions as lead bidders, as well as partners to other bidders, will provide the largest possible selection of service alternatives to the populations of high-cost areas.

D. Any Auction Process Should Allow Bidders As Much Flexibility As Possible

1. The Service Area Should Permit Optimal Flexibility and Allow "Apples to Apples" Comparisons

Any auction process should refrain from placing restrictions on the service area proposed by auction participants. The ViaSat/WildBlue proposal agrees with the Commission's tentative conclusion that the census block should be the primary measure of the service area for auctions. The ViaSat/WildBlue proposal notes, however, that providing service to larger areas may provide critical economies of scale for satellite providers, and auctions should allow for such showings.[41] LightSquared agrees. In fact, if service areas are defined too narrowly, satellite providers could be forced to make unnecessary investments in creating narrow spot beams, and this may make an inherently cost-effective technology uneconomic. For example, many Native American Reservations are of unusual shape, "gerrymandered" by lines drawn by treaty or natural boundaries. It often is not possible to package these areas in pre-defined terms of "study

[40] *See USF/ICC NPRM,* ¶ 272.
[41] *ViaSat/WildBlue Letter,* 6.

areas" or "wire centers."[42] LightSquared's view is consistent with the other plans on which the Commission has sought comment. Both the *RLEC Plan*[43] and the *State Regulators Plan*[44] support the ability of ETCs to provide service in areas defined more broadly than census blocks. Similarly, the *ABC Plan* proposes that ETCs may aggregate census blocks.[45]

In addition, LightSquared agrees with ViaSat/WildBlue that if a bidder defines a service area including multiple census blocks, it should nevertheless specify the cost of service for each of the census blocks included.[46] This addresses the very likely scenario in which different bidders will offer bids that serve differently-defined areas in which some census blocks overlap. In such circumstances, the Commission will be confronted by plans with significantly different total costs, which nevertheless cover some of the same census blocks. Direct comparison between such plans is impossible if only aggregate costs are considered. In contrast, requiring costing on a census block-by-census block basis will allow a direct "apples to apples" comparison, and an accurate evaluation of each proposed bid.

2. The Auction Process Should Not Restrict the Capacity of the Service Offered or Pricing Options for Services

The ViaSat/WildBlue proposal also posits an auction system in which the Commission pre-defines service parameters and possibly price.[47] LightSquared believes that such restrictions on auctions would unnecessarily limit participants and stifle innovation. Rather, the Commission should set a national baseline standard for broadband, and provide auction participants as much flexibility as possible in demonstrating consumer value and cost effectiveness. Discretion in

[42] *LightSquared Docket No. 11-41 Comments,* 3.
[43] *RLEC Plan,* 47-50.
[44] *State Regulators Plan,* 85-86.
[45] *ABC Plan,* 4.
[46] *ViaSat/WildBlue Letter,* 9, ¶ 25.
[47] *ViaSat/WildBlue Letter,* 6, ¶ 12.

setting data speeds and pricing levels provides auction participants with optimal flexibility in arranging service packages, and it should not be restricted.

III. THE COMMISSION SHOULD EXEMPT TRIBAL LANDS FROM RULES THAT WOULD REDUCE CURRENT LEVELS OF SUPPORT, PREVENT POSSIBLE INCREASES IN SUPPORT WHEN WARRANTED, OR LIMIT OPPORTUNITIES FOR COMPETITIVE ENTRY

The Commission's *Public Notice* expressly seeks comment on whether "any special circumstances" warrant a different approach to USF regulation on Tribal lands, and asks numerous other questions specific to the provision of broadband services to Native Americans.[48] These questions are consistent with a whole series of questions raised in the *USF/ICC NPRM*, where the Commission asks if Tribes should be exempted from any phase down on USF programs[49] or support for competitive eligible telecommunications carriers ("CETCs").[50] As discussed below, the answer to these questions is "yes" – the Commission has long recognized that Tribal lands present unique challenges to providers of telecommunications, and require unique solutions. Moreover, this sentiment is widely reflected in the comments filed in response to the Commission's NPRM. The ABC Plan Signatories state that:

> The appropriate treatment of Alaska, Hawaii, Tribal lands and the U.S. Territories is an important but complex issue. The ABC Plan signatories are committed to working with the Commission and other interested parties to arrive at an approach to these areas . . . .[51]

In addition, the Native American parties and organizations that have filed comments in this proceeding are unanimous in calling for the Commission to craft unique solutions that are expressly tailored to meet the unique needs, and to address the unique challenges, of Tribal

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[48] *Public Notice,* 10.
[49] *USF/ICC NPRM,* ¶¶ 211, 242, 254, 297-98, 411, 417, 443.
[50] *Id*., ¶ 259.
[51] *ABC Signatory Comments*, 17.

lands.[52] Since its inception, LightSquared has demonstrated a commitment to enable the provision of broadband services on Tribal lands, and offers the following comments on this issue.

A. The Commission Has Consistently Recognized the Unique Challenges to Entities Seeking to Provide Service to Tribal Lands, and the Critical Role of USF In the Provision of Such Service

The Commission has consistently, and again recently, recognized the unique role that USF plays in supporting both basic and broadband service on Tribal lands. This year, the Commission made two ETC designations for carriers serving Native American populations. In June of this year, the Commission expanded the service area served by Standing Rock Telecommunications, Inc., a CETC owned by the Standing Rock Sioux Tribe, located in North and South Dakota.[53] In so doing, the Commission noted the critical nature of USF support in bringing telecommunications services to Tribal lands.[54] The Commission also noted the unique roll that Tribal government and Tribally-owned telecommunications providers play in maintaining Tribal sovereignty and culture.[55]

In May of this year, the Commission granted AT&T Mobility CETC status for the provision of service to the Oglala Sioux Tribe in Pine Ridge, South Dakota.[56] In so doing, the Commission took the unusual step of approving CETC status even though the Tribe opposed such a designation, due to a pending dispute between the Tribe and AT&T Mobility over terms

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[52] *E.g.,* Comments of Gila River Telecommunications, Inc., 7-10 and *passim*, and Comments of the Native Telecom Coalition for Broadband, 2, both filed in the above-captioned docketed proceedings and dated August 24, 2011; Joint Comments of the Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc., On Proposed Reform of Universal Service, Lifeline, and Link Up, 2-3 and *passim*, filed in the above-captioned docketed proceedings and dated August 23, 2011; and Comments of the National Tribal Telecommunications Association, § 4(D) and *passim*, filed in the above-captioned docketed proceedings, undated.

[53] *Telecommunications Carriers Eligible for Universal Service Support*, 26 FCC Rcd 9160 (2011) ("*Standing Rock CETC Order*").

[54] *Id*., ¶¶ 1-2 and *passim*.

[55] *Id*., ¶ 15.

[56] *Telecommunications Carriers Eligible for Universal Service Support*, 26 FCC Rcd 6763 (2011) ("*Pine Ridge CETC Order*").

of service. The Commission noted that, without High-Cost USF support, AT&T Mobility would not otherwise be able to construct the facilities and provide the services that it was able to provide on the Pine Ridge Reservation, and that this constituted a public interest benefit sufficient to overcome the opposition of the Tribe.[57]

Moreover the Commission has recognized that service to Tribal lands entails unique challenges that justify exemption from the USF rules that apply to other rural areas. In 2008, the Commission took action to slow the explosive growth of USF High Cost funds by placing a cap on funding for CETCs.[58] However, in doing so, it expressly exempted Tribal lands from this cap, finding that Tribal lands were so underserved, and presented such severe challenges, that special treatment was required.[59]

The exemption of Tribal lands from this cap on USF funding was lauded in separate statements by Commissioner Copps:

> The Order excludes from the cap high cost support for CETCs serving tribal lands or Native Alaskan Regions. These areas are among the most underserved when it comes to telecommunications – both basic phone service and broadband. The Commission must continue to focus on ways to bring affordable services to these areas as their residents are equally deserving of the benefits that technology affords;[60]

and by Commissioner McDowell:

> Additionally, I support an exception for all of the providers serving tribal lands across the country, and Alaska Native lands – some of the most under-served parts of America. This limited exception will ensure that companies operating in these remote areas will continue to receive high-cost support to provide their services while we move toward a permanent solution. Furthermore, these

[57] *Pine Ridge CETC Order,* 26 FCC Rcd 6763., ¶ 18.
[58] *High-Cost Universal Service Support Federal State Joint Board on Universal Service Alltel Communications, Inc. et al.,* 23 FCC Rcd 8834 (2008).
[59] *Id*., 8848, ¶ 32.
[60] *Id*., 8946.

terms do not favor any specific provider.[61]

These recent orders demonstrate that High Cost support plays a uniquely critical role in the provision of both basic and broadband service to Tribal lands, sufficient to require exemption from the rules. As discussed below, LightSquared urges the Commission to exempt Tribal lands from any new rules that could result in a net reduction of support below the High Cost levels existing today. Indeed, the unique challenges facing Tribal lands may warrant an increase in such USF support.

B. The Commission Must Exempt Tribal Lands From Any Reduction In Currently Available USF Support, and Must Not Limit Opportunities For New Competitive Entrants to Provide Service On Tribal Lands

In its Comments in CG Docket No. 11-41, LightSquared noted that, even though the Commission adopted rules and policies for wireless carriers to serve Tribal lands, "more than a decade later, availability and adoption of communications services on Tribal lands still lags far behind national averages."[62] This conclusion was most recently affirmed in the Briefing Materials issued by the National Congress of American Indians' White House Native American Business Leaders Roundtable on August 4, 2011.[63] Those Materials conclude that Native American communities are grossly underserved in terms of banking services, capital development, and broadband services, and that these deficiencies contribute to severe levels of unemployment and underemployment.[64]

LightSquared's satellite-based services will provide the telecommunications infrastructure that will allow Native American communities to begin to address these problems. As a wholesale service provider, LightSquared has the incentive and ability to provide services

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[61] 23 FCC Rcd 8834, 8951.
[62] *LightSquared Docket No. 11-41 Comments, 3.*
[63] National Congress of American Indians, White House Native American Business Leaders Roundtable – Briefing Materials, issued Aug. 4, 2011 ("White House Briefing Materials").
[64] *Id.*, 3-4.

that can empower a wide variety of innovative providers of services and applications, from healthcare and law enforcement, to Tribally-owned telecommunications and data service providers. LightSquared's role as a wholesale provider also addresses the Commission's questions regarding the types of services that CAF recipients should provide. Specifically, the Commission seeks comment on a proposal by Public Knowledge that CAF recipients be required to provide backhaul to high-cost communities that wish to deploy their own broadband networks.[65] As a provider of wholesale broadband services, LightSquared will perform this function. But, as the Commission has long recognized, adequate USF support is critical to the deployment of these services.

Because the overarching goal of the Commission's proposed new CAF rules is to cap, and ultimately reduce, the overall size of the USF funds, this model is not appropriate for Tribal lands. Indeed, the paucity of service on Tribal lands to date demonstrates that existing levels of USF support may be inadequate, and overall funding levels may need to be increased for Tribal lands. Such an outcome is necessary to provide adequate service to the most underserved populations in the country. At the same time, Native Americans represent only a small fraction of the nations' subscribers, households, and land area – service to Native lands has never been a driver in the exploding costs of the USF funds[66] – and exempting this discrete population from caps that will be imposed on USF/CAF programs will not be inconsistent with the Commission's overarching goal of controlling the overall funding of High Cost support, and maintaining nation-wide support at sustainable levels.

Moreover, the Commission's tentative conclusion that CAF should support only one

[65] *Public Notice*, DA 11-1348, 8.

[66] The Commission effectively made this decision when exempting Tribal lands from the CETC funding caps that it adopted in 2008. *High-Cost Universal Service Support Federal State Joint Board on Universal Service Alltel Communications, Inc. et al.,* 23 FCC Rcd 8834 (2008).

service provider in a given area is also inappropriate for Tribal lands. The grossly underserved state of most Tribal lands indicates that the present carriers serving those areas may not be adequate to the task of providing the type of broadband services that the Commissions' Broadband Plan envisions. As the Commission recognized in the *Standing Rock CETC Order*, Tribally-owned service providers may be uniquely qualified to provide service consistent with the Tribe's sovereignty and culture. Yet, today, of the more than 300 federally recognized Tribes in the United States, only eight have Tribally-owned local exchange carriers that have received ETC designation.[67] The Commission should take affirmative steps to promote the ability of Tribes to create their own broadband and telecommunications carriers, and must avoid subjecting Tribal lands to USF/CAF restrictions that could provide a disincentive to such development.

The Commission's concern for supporting Tribal sovereignty and control over services on Tribal lands is reflected in the *USF/ICC NPRM's* inquiry about the role of Tribal government in approving ETC designations.[68] LightSquared believes that Tribal governments should be actively involved in such decisions, and that the Commission should expressly solicit and give substantial weight to Tribal input in making ETC determinations.

There is clearly a need for a USF system that can support new entrants, be they wholesale providers such as LightSquared, or new Tribally-owned local exchange carriers. The proposals in the *USF/ICC NPRM* do not appear to accommodate such developments, however. As a result, Tribal lands should be exempted from any new USF/CAF rules that would reduce the levels of existing funding, prevent increased funding, and disqualify new entrants from receiving USF support on Tribal lands.

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[67] *Improving Communications Services for Native Nations*, 26 FCC Rcd 2672, 2680, ¶ 12 & n.46 (2011).
[68] *USF/ICC NPRM,* ¶ 320. *See also Public Notice*, DA 11-1348, 5.

IV. CONCLUSION

For the reasons discussed above, the Commission should adopt rules ensuring that adequate support is available to support the deployment of broadband on Tribal lands and in other unserved areas.

Respectfully submitted,

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